

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1617 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

KALYANDASJI GOMTIDASJI

Appearance:

Mr.H.L. Jani, AGP, for the appellants-State.

Mr.G.M. Amin for the claimant

Mr.D.K. Nakrani for Mr. Shantilal S. Shah for the respondent No.2-Union of India.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 01/04/99

ORAL JUDGEMENT

1. By means of filing this appeal under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged legality of the judgment and award dated December 31, 1987, rendered by the learned Assistant Judge, Surendranagar, in Land Acquisition Reference No. 3 of 1980.

2. A proposal to acquire land bearing Survey No.449 of village Dudharej, Taluka Wadhawan, Dist: Surendranagar, for the public purpose of 'Virangam-Okha-Porbandar Broad-guage Conversion Scheme', was received by the State Government. On scrutiny of the said proposal, the State Government was satisfied that land bearing Survey No.449 of village Dudharej, was likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the Government Gazette on July 5, 1973. The land owner was served with notice under Section 4 of the Act, and he had filed his objections against the proposed acquisition. After considering his objections, the Land Acquisition Officer had forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the land bearing Survey No.449 of village Dudharej was needed for the public purpose of 'Virangam-Okha-Porbandar Broad-guage Conversion Scheme'. Therefore, declaration under Section 6 of the Act was made which was published in official gazette on January 30, 1974. Thereafter, respondent No.1 was served with notice under Section 9 of the Act for determination of compensation. The respondent No.1 appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.8.00 per sq.yard i.e. Rs.9.60 ps per sq.mtr., but, having regard to the materials placed before him, the Land Acquisition Officer, by his award dated November 30, 1978, offered compensation to the respondent No.1 at the rate of Rs.2.98 paise per sq.mtr. The respondent No.1 was of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate and, therefore, by filing an application, he required the Land Acquisition Officer to refer the matter to the Court for the purpose of determination of compensation. Accordingly, reference was made to the District Court, Surendranagar, which was numbered as Land Acquisition Reference No.3 of 1980. In the reference application, the respondent No.1 pleaded that the land acquired was very valuable, and having regard to over all development, which had taken place near the acquired land, as well as potentiality of the agricultural land for building

purpose, he was entitled to higher compensation. The respondent No.1, in the reference application, claimed compensation at the rate of Rs.9.60 per sq.mtr. The reference application was contested by the present appellants vide written statement Exh.11. In the reply, it was stated that the Land Acquisition Officer had taken into consideration all the relevant factors before making the award and therefore the reference application should be dismissed. Upon rival assertions made by the parties, necessary issues for determination were raised by the Reference Court at Exh.13. In order to substantiate the claim advanced in the reference application, the respondent No.1 examined himself at Exh.66. On behalf of the appellant, two witnesses were examined, namely, Valji Dahyabhai Waghela at Exh.99 and Parshottam Nanjibhai Bhesjaria at Exh.100. On appreciation of evidence, the Reference Court held that the compensation offered by the Land Acquisition Officer to the respondent No.1 was inadequate. The Reference Court noticed that the land under acquisition was very near to the northern boundary of the city of Surendranagar and huge development at the relevant time had taken place on the northern side of city of Surendranagar, with the result, there was high potential value of the land under acquisition for development of Surendranagar city. After taking into consideration the documentary evidence produced by the claimant, the Reference Court held that sale instances produced by the claimants in respect of Survey Nos. 663-paiki, which was given new Survey No.719, 719, 580-paiki, 633-paiki and 606-paiki were relevant as well as comparable for the purpose of ascertaining the market value of the acquired lands. In ultimate decision, the Reference Court has held that the respondent No.1 is entitled to compensation at the rate of Rs.9.60 per sq.mtr by the impugned award, which has given rise to the present appeals. We may state that the Reference Court also granted statutory benefits available to the respondent No.1 under Section 23(1-A) and 34 of the Act as well as interest on the amount payable to the respondent No.1 under Section 23(1-A) and 23(2) of the Act.

3. The learned Government Counsel submitted that the sale instances relating to Survey Nos. 663, 719, 580-paiki, 633 and 606 were not proved and, therefore, the same could not have been relied upon by the Reference Court while ascertaining market value of the acquired lands. It was submitted that development in the nearby area had taken place after the acquisition of the lands in the present case and, therefore, the said development could not have been made basis for the purpose of

determining market value of the acquired lands. The learned Counsel vehemently submitted that no cogent evidence was led by the claimant to establish that he was entitled to compensation at the rate of Rs.9.60 per sq.mtr and, therefore, the impugned award should be set aside. What was asserted by the learned Government Counsel was that the Land Acquisition Officer had made his award under Section 11 of the Act on November 38, 1978 and, therefore, direction to pay additional amount of compensation under Section 23(1-A) of the Act should not have been granted by the Reference Court. The learned counsel further contended that the claimant is not entitled to interest on the amount payable to him under Section 23(1-A) and Section 23(2) of the Act and, therefore, direction given by the Reference Court to pay interest on those amounts should be set aside.

4. Mr. G.M. Amin, with Mr. P.S. Champaneri, learned counsel for the claimants, submitted that similarly situated other lands of the same village were acquired by the State Government pursuant to publication of preliminary notification under Section 4(1) of the Act on June 28, 1973 for the same public purpose and the award made by the Reference Court in respect of those lands in Land Reference Cases Nos.2/87 to 22/84 and 37/84, as modified by the High Court in First Appeal Nos. 1555 of 1988 to 1576 of 1988, should be made basis for the purpose of determining the market value of the lands acquired in the present case. The learned counsel pleaded that possession of the acquired land was taken on December 14, 1973 and, therefore, direction to pay interest at the rate of 9% per annum from 1.1.1988 for a period of one year and thereafter at the rate of 15% per annum till the realisation of the amount should not have been given by the Reference Court. The learned counsel submitted that a just award has been passed by the Reference Court awarding compensation to the claimant and, therefore, the present appeal should be dismissed.

5. We have heard the learned counsel for the parties at length and we have also gone through the record of the case. Normally, methods of valuation are: (1) opinion of experts: (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages: and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market

value. In this case, the Reference Court has referred to sale instances for the purpose of ascertaining the market value of the acquired lands. Those sale instances are tabulated in paragraph 18 of the judgment. However, the sale instances are not proved at all and, therefore, those sale instances could not have been taken into consideration by the Reference Court for the purpose of ascertaining the market value of the acquired lands. The best evidence of the value of the property is sale transaction in respect of the acquired land to which the claimant maybe a party, failing which, sale transaction relating to neighbouring land in the vicinity of the acquired land can be relied upon. When sale deed relating to neighbouring lands in the vicinity of the acquired lands is sought to be relied upon, the features which are required to be presented before the Court are (i) the transactions must be within a reasonable time of the publication of notification; (ii) the transactions should be bonafide transactions; (iii) they should be relating to the lands similar to the lands acquired or the lands adjacent to the lands acquired; and (iv) they should relate to the lands possessing similar advantageous features. These are the relevant features to be taken into consideration to prove the market value of the acquired lands as on the date of notification published under Section 4(1) of the Act. These relevant features can be established by examining either vendor or vendee or, when they are not available, by examining scribe of the document. In the present case, the claimant had not examined either vendor or vendee or scribe of the documents to present the relevant features before the Court, and, therefore, those sale instances could not have been relied upon by the Reference Court while determining the market value of the acquired land. In the case of State of Gujarat and others vs. Rama Rana and others, 1997 (3) GLR 1954, the Supreme Court has emphasized that the Court has statutory duty to subject evidence to a great scrutiny and to award a just compensation to the claimants in case of compulsory acquisition of land. We may state that other lands of village Dudharej were placed under acquisition pursuant to publication of preliminary notification under Section 4(1) of the Act on June 28, 1977 for the same public purpose. Therein, the Land Acquisition Officer had made award on May 2, 1983 and offered compensation to the claimants at the rate of Rs.2.50 ps to Rs.5.00 per sq.mtr for agricultural and non-agricultural lands respectively. Feeling aggrieved by the said offer of compensation, the claimants had sought references and in the Land Acquisition References Nos. 2/84 to 22/84 and 37/84, the Reference Court by common judgment and award dated

December 31, 1987, had awarded compensation to the claimants at the rate of Rs.12/- per sq.mtr. Feeling aggrieved by the said award of the Reference Court, the State Government had preferred First Appeals Nos. 1555 of 1988 to 1576 of 1988 and the Division Bench, vide common judgment and order dated march 23, 1999, has held that the claimants in those cases were entitled to compensation at the rate of Rs.12/- per sq.mtr for non-agricultural lands and at the rate of Rs.9/- per sq.mtr for agricultural lands. The award given by the Court is, at least, relevant material and would be in the nature of admission with regard to value of the lands on behalf of the State and if the land involved in the award is comparable land and in reasonable proximity of the acquired lands, the rate found in the said award would be a reliable material to afford a basis to work upon for determination of compensation for similarly acquired lands on a later date. The award of the Court, therefore, cannot be dismissed as inadmissible for the purpose of determination of compensation. A judgment of a court in a land acquisition case determining market value of a land in the vicinity of the acquired lands, even though not inter-partes, can be relied upon either as an instance or one from which the market value of the acquired lands could be deduced or inferred. The fact that other lands from this very village were placed under acquisition pursuant to publication of preliminary notification under Section 4(1) of the Act on June 28, 1977 for the same public purpose, is not in dispute. It is not in dispute that in Land Acquisition Reference Nos. 2/84 to 22/84 and 37/84, the Reference Court, by judgment and award dated December 31, 1987, had awarded compensation to the claimants at the rate of Rs.12.00 per sq.mtr. It is also an admitted position that in First Appeal Nos. 1555/88 to 1576/88, which were directed against the said award, the High Court has modified the said award and held that the claimants in those cases were entitled to compensation at the rate of Rs.12.00 per sq.mtr for non-agricultural lands and Rs.9/per sq.mtr for agricultural lands. The evidence of the claimant recorded at Exh. 66 establishes that the land acquired in the present case was similar to the lands in all respects in respect of which the modified award was passed by the High Court. Though the claimant has failed to prove sale instances to enable the Court to determine the market value of the acquired land, the previous award, as modified by the High Court, can be taken into consideration advantageously for the purpose of determining market value of the acquired lands. We may state that the High Court in those matters has determined market value of similarly situated lands on the basis of

sale deeds which were proved in those cases. Under the circumstances, we hold that the claim advanced by the claimant is not liable to be defeated on the ground that he could not adduce relevant evidence to enable the Court to determine the market value of the acquired lands. In our opinion, the Reference Court was not justified in holding that there is uniform potential value with respect to non-agricultural lands and agricultural lands under acquisition and, therefore, the market value of both the kinds of lands should be uniform as well as identical. In the previous award, it is held that the market value of the agricultural lands was Rs.9.00 per sq.mtr. on the relevant date, and, placing reliance on the said previous award, we hold that the market value of the land acquired in the present case was Rs.9.00 per sq.mtr. as on the relevant date.

6. In this case, the Land Acquisition Officer had made his award under Section 11 of the Act on November 30, 1978 and, therefore, the Reference Court was not justified in directing the appellants to pay additional amount of compensation as envisaged under Section 23(1-A) of the Act. Therefore, the said direction will have to be set aside. Again, in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra vs. Maharau Srawan Hatkar, Judgment Today 1995 (2) S.C. 583, direction to pay interest on the amounts payable to the claimant under Section 23(1-A) and 23(2) of the Act could not have been given, because the Supreme Court has ruled that additional amounts envisaged under sub-sections (1-A) and (2) of Section 23 are not part of component of compensation awarded under Section 23(1) of the Act and, therefore, direction to pay interest on these amounts cannot be given. The record of the case indicates that possession of the acquired land was taken on December 14, 1973 and, therefore, the Reference Court was not justified in directing the appellants to pay interest at the rate of 9% per annum from 1.1.1988 for a period of one year and, thereafter, at the rate of 15% per annum till realisation of the amount. In fact, the appellants ought to have been directed to pay interest at the rate of 9% per annum from December 14, 1973 for one year and, thereafter, at the rate of 15% per annum till realisation of the amount.

7. For the foregoing reasons, the appeal filed by the appellants is partly allowed. It is held that the market value of the acquired land on the relevant date was Rs.9.00 per sq.mtr. The respondent No.1 is not entitled to amount as envisaged under Section 23(1-A) of the Act nor to the interest on the amount payable to him

under Section 23(2) of the Act. The respondent No.1 shall be entitled to interest at the rate of 9% per annum from December 14, 1973 for a period of one year and thereafter at the rate of 15% per annum till the amount is realised. The rest of the directions given by the Reference Court with regard to payment of solatium, etc. are not disturbed and are hereby upheld. The office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

(swamy)